1957.

K

File No. O. Wts & Measures 57

Legal Deptt.

A BRANCH

Subject:-

Opinions under the Bombay Weights and Measures Act, 1932

P-5/(E)

File No. O. Wts & Measures/57

Gen. 191 e.

543-A

C O N T E N T S.

Legal Department File No. C. Weight & Measures/52.

Sr. No.	R.I.No./ Misc.	Subject	Pages.
		Ch. Weight and Measures Act, 1932.	
	7630 15-5-51.	Sec. 22(1) - Whether powers of inspections can be delegated to the Chief Marketing Officer and the Marketing Inspectors under--- whether they can be declared to be Public prosecutors for the purposes of this Act.	1-2
2	12760 8-9-51.	Whether payment of rent in kind would amount to "trade within the meaning of Sec. 11.	3-6

1/5

7/8

Office of the R.L.A.

The first proposal is to delegate the powers of Inspectors of Weights and Measures under section 22(1) of the Bombay Weights and Measures Act, 1932, to the Chief Marketing Officer and the Marketing Inspectors. The second proposal is to declare them to be public Prosecutors for the purposes of the Bombay Weights and Measures Act.

2. As regards the first proposal, no delegation of powers of an Inspector are contemplated in sub-section (1) of section 22 of the Act. What that sub-section contemplates is that every Inspector who has been authorized in writing in that behalf by the authority appointing him has to exercise certain powers specified therein. If the intention is that the Chief Marketing Officer and the Marketing Inspectors should exercise the powers of an Inspector under the Act, the only method is to appoint them as Inspectors under section 19 of the Act. Section 19(1) of the Act however provides that Government shall appoint a certain number of persons with prescribed qualifications as Inspectors. The word "prescribed" has been defined in section 3(5) of the Act to mean ' prescribed by rules or regulations made under this Act.' The qualifications of Inspectors have accordingly been prescribed in rule 136 of the Bombay Weights & Measures Rules, 1934. It is thus clear that only those persons who hold the qualifications as prescribed under rule 136 can be appointed as Inspectors under the Act. The Development Department shold ascertain whether the Marketing Officers can be said to hold the aforesaid qualifications so that they can be appointed as Inspectors under section 19 of the Act and thus exercise the powers under section

section 22(1) of the Act. (From the report of the Director of Industries dated the 19th September , 1948 it appears that Marketing Inspectors do not possess basic qualifications required for verification and stamping of weights and measures) There is no provision in the Act under which the Chief Marketing Officer and the Marketing Inspectors can be delegated any of the powers of the Inspector.

3. As regards the second proposal to appoint them as Public Prosecutors, it may be pointed out that all Inspectors of Weights and Measures have been appointed as Public ~~Procedure~~ Prosecutors under section 492(1) of the Code of Criminal Procedure under G.N., C.D. No. 1250/33 dated 14-1-1936. If the Chief ~~Market~~ Marketing Officer and the Marketing Inspectors are not qualified to be appointed as Inspectors under the Act, it is for consideration of Government whether any useful purpose would be served by appointing them as Public Prosecutors for the purposes of the Act.

Remembrancer of Legal Affairs.

U.R. to D.H., No. 7630, Dated the 15th May 1951.

SSM / 29/6/56.

Office of the R.L.A.

The question for R.L.A.'s consideration is whether payment of rent in kind would amount to 'trade' within the meaning of section 11A of the Bombay Weights and Measures Act, 1932.

2. Section 11A of the Bombay Weights and Measures Act, 1932, provides:-

"(1) Government may by notification in the Official Gazette, declare that such standard weights and measures or weighing or measuring instruments shall, not with standing anything contained in this Act, be used for such trade or class of trades in such area form such date and subject to such conditions as may be specified in the notification

"(2) On and from the date specified in the notification under sub-section (1), no weight measure or weighing or measuring instrument other than the one specified in such notificati be used in such trade or class of trades."

3. As the word "trade" has not been defined in the Act, it should be attributed its ordinary meaning. The term 'trade' in its ordinary sense means exchange of goods for money or goods for goods with the object of making profits (see Burmah Shell Oil Storage vs. Sudhansu Chatterjee, A.I.R. (1936) Ca. p. 477). Payment of rent in kind does not involve the question of any dealing or transaction of buying or selling or of exchange of one commodity for another for profit, and consequently, will not amount to "business" within the menaing of section 11.

4.

4. It is true that the Explanation to section 12 says "Unless there is anything repugnant in the subject or context, dealing or contract is hereinafter called 'trade'. This Explanation obviously applies to the word "trade" wherever used in the Act after section 12. It will, therefore, not apply to the word "trade " used in section 11.

5. Section 12(1) is as follows:

"Subject to the provisions of section 46, and notiwithstanding anything contained in any law for the time being in force, all dealings or contracts, had or made in any area after this Part shall have come into force in the said area for any work to be done or goods to be sold or delivered by weight or measure, shall be deemed to be had or made according to one of the standard weights or measures or to multiplies (or sub-multiplts.) thereof and it shall not be lawful to use any other weight or measure in relation to any such dealing or contract."

It will be seen that the prohibition applies only to dealings or contracts for any work to be done or goods to be sold or delivered by weight or measure. In contracts of tenancy on crop share system, the contract usually is that a certain protion of the crop, say one-third or one-foruth, is to be delivered by the tenant. The contract is not for delivery of crop by weight or measure. Therefore, the prohibition contained in section 12 will not apply to contracts of tenancy of crip share system. However, if a contract of tenancy is, say for example, that 10 maunds or a certain number of measures shall be delivered by the tenant to the landlord by way of rent then the prohibition in section 12 will apply to such a contract.

Sd/- 3 R.D. 8/8

R. L. A.

D.D.No. 1276 dt 8-8-51